

Media Articles on Law Firm

Interest-Based Bargaining The Future of Negotiations

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Abstract

Collective bargaining is the process in which management and unions negotiate labor contracts. The traditional approach to labor negotiations is viewed as adversarial or confrontational collective bargaining. This approach is based on the assumption that the fundamental interests of both parties sharply conflict with one another. The outcome of parties negotiating contracts in this style is viewed as either winners or losers.

Up until 1993, adversarial bargaining was the style of negotiating labor contracts used in San Francisco between the hotel industry and the union, Hotel Employees and Restaurant Employees (HERE) Local 2. At that time, HERE was considered one of the most confrontational unions in the country. Desiring an end to adversarial labor relations with HERE, 11 major hotels formed the San Francisco Hotels Multiemployer Group in 1994 with the goal of promoting labor-management cooperation. This group approached HERE seeking cooperation with a new concept to labor negotiations. They proposed an interest-based bargaining approach to labor negotiations, one in which both sides would undertake a preliminary, non-binding joint study before contract negotiations commenced. The belief was that an interest-based bargaining approach to contract negotiations would strengthen the relationship between the two parties by focusing on common interests instead of conflicting interests. With both parties in agreement, the process of interest-based bargaining began in 1994 resulting in a dramatic and successful shift in the process of negotiations.

This paper examines the subject of collective bargaining focusing on the history of this process and the various attitudes toward bargaining that influence negotiating styles. Also examined is the implementation of interest-based bargaining between the San Francisco Hotels Multiemployer Group and the Hotel Employees and Restaurant Employees, Local 2.

Chapter 1- Historical Introduction to Collective Bargaining

Collective bargaining is the process in which employers and unions meet to negotiate over wages, hours and working conditions. There is a long history of laborers organizing collectively in the United States. As early as 1799, instances of collective bargaining occurred when laborers in the Philadelphia shoe industry, known as cordwainers, met with master shoemakers and

formed a trade agreement to increase wages. Around this same time, printers, carpenters and tailors in New York and Philadelphia organized societies with the intent of improving wages, benefits and hours (Madison 57). The success of these groups was often brief, but nonetheless, their collective bargaining activities served as precursors to organized labor unions. Although there are early examples of collective bargaining in American history; laborers, for the most part, experienced intense opposition from employers.

Almost as soon as laborers attempted to bargain collectively, employers developed strategies to suppress such organized labor activities. Retaliating against work stoppage and strike tactics employed by organized labor, employers opposed unions with every means at their disposal. Newspapers tended to side with employers during a strike and published articles to influence the public against organized labor. Employers would also agree to wage increases and then fail to deliver on agreements. The most effective weapon used by employers against organized labor, however, was litigation.

In 1806, eight Philadelphia shoemakers were on trial, referred to as the Cordwainers Conspiracy Cases, for criminally conspiring to raise their wages. The charge, based on English common law and interpreted by the courts, "held that any combination of workmen for their personal benefit necessarily aimed at the injury of their employers was therefore illegal" (Madison 4). It was the belief that what was legal for one person was illegal for a group of people. Laborers acting as individuals were free to bargain for an increase in wages with their employers. The courts, ignoring the fact that laborers bargaining collectively wielded more economic power, ruled it an illegal act of conspiracy to bargain collectively. Although the Cordwainers Conspiracy Cases proved a disastrous blow to early-organized labor, laborers continued to organize in defiance of the conspiracy doctrine.

Experiencing an upsurge in organized labor activity, particularly that of the rail strike of the 1890's, employers again found remedy in the courts to control labor activity. The increase of court ordered injunctions was instrumental in gaining ground for employers but injunctions were, in fact, nothing new in the arena of labor disputes. Injunctions had been issued for centuries in England and America and proved effective against organized labor. The injunctions issued prior to the 1890's were legally questionable since, "In most cases, they were issued to prevent strikers from committing acts already prohibited by criminal laws" (Rayback 204). The injunctions issued in the 1890's were based on firmer legal ground as they were used to prevent violation of the Sherman Antitrust Act, passed in by Congress in 1890, which outlawed obstruction of interstate commerce and trade monopolies. Injunctions were also issued to protect private property. Private property, in this legal sense, is in the form of probable expectancies meaning an employer's future relations with employees or customers. The Supreme Court case decision during that time, *In re Debs*, dealt a crucial blow to labor as it significantly increased judicial power to restrict organized labor activity, ". . . sanctioning the concept that conspiracy in restraint of trade was not only a criminal but a civil offense, thus widening the possible judicial use of the old doctrine of conspiracy as it applied to labor. It meant that thereafter labor activities could be forestalled by civil action" (Rayback 206).

Not until Congress passed the Wagner Act in 1935, officially known as the National Labor Relations Act, were unions given the legal sanction to bargain collectively. The passage of this

act was made possible by a pro-labor Congress. The Labor Relations Act (NLRA) is based on one central idea titled, Rights of Employees:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining . . ." (Section 7 § 157).

Aware of the fact that employers were adept at interfering with labor organization, Congress included additional provision in the National Labor Relations Act to prohibit employer obstruction of the law. In Section 8(a) five unfair labor practices were set forth which employers were not allowed to engage. Among some of the practices ruled unfair, employers were prohibited from discriminating against union employees and interfering with the formation of labor organizations. Additionally, provision (d) requires further protection of organized labor activities by requiring employers an obligation to bargain collectively in good-faith. Finally, to enforce the law, the National Labor Relations Board was established to conduct hearings on charges of unfair labor practices and to issue decisions subject to the appeal of the federal courts. The NLRA, along with the Norris LaGuardia Act of 1932, which denied federal courts the right to forbid strikes and peaceful picketing, had a significant impact on union growth, "The labor movement as a whole grew from 4 million in 1935 to roughly 16 million in 1948, testifying to the impact of the Wagner Act" (Herman 43).

Responding to employer demands to repeal the Wagner Act, The Taft-Hartley Act, officially known as the Labor-Management Relations Act of 1947, was passed under a Republican controlled Congress. Employers asserted that the Wagner Act was one-sided since, ". . . the law gave no protection to the employer, the public, or even the employees in a fight between two unions" (Herman 43). As the Wagner Act provided union protection from employers, the complex Taft-Hartley Act served to protect all parties from the acts of both unions and management. Regardless of the various controlling aspects of the Taft-Wagner Act, unions finally gained the legal right to bargain collectively after 1935, increasing economic power and the ability to negotiate better wages, benefits and work rules for its members.

Chapter 2- Attitudes Toward Collective Bargaining

The lengthy legal opposition to collective bargaining in the United States directly affected the development of collective bargaining attitudes and approaches toward negotiating. Illustrating the attitudes that have evolved, four types of bargaining attitudes are presented in *Collective Bargaining and Labor Relations*, Herman (1998). These styles are termed: conflict, power, accommodation, and cooperative bargaining.

As indicated by the term conflict, this attitude toward bargaining is a result of a strong employer opposition to the mere existence of the union. Employers engaged in a conflicted relationship with unions will attempt to prevent unionization by legal and illegal tactics. If a union is successful in organizing, the employer will negotiate only because it legally must and generally, will limit negotiating to the narrowest possible scope.

Power bargaining is similar to conflict bargaining in that employers oppose unionization. Employers try to keep unions weak and defensive but do not go so far as to interfere with unionization. Examples of tactics used by employers to achieve this goal are operating during strikes and hiring employees to replace strikers. Employers and unions involved in power bargaining relationships are centered on the threat of union strikes. In this relationship, "The unions may build large strike funds, engender antagonism toward the employer among members and the public, apply political pressures, or strike in disregard of the public interest" (Herman 69). The purpose of such tactics on both sides is to demonstrate strength in positions.

Accommodation and cooperation are closely related attitudes toward bargaining. Employers operating in the spirit of accommodation may not particularly like unions but view them as legitimate and seek the best possible relationship with them. They may publicly recognize the benefits of cooperation with unions and during strikes, employers close down production instead of trying to keep operations going with replacement workers.

Cooperation bargaining goes one step further in that it brings union representatives and its members directly to the negotiating process. Normally, union representatives negotiate at the bargaining table while members wait for the results. With the cooperative approach, line-workers and other employees are brought into the negotiation process with employers. These joint efforts between employers, union representatives and union members are viewed as problem solving teams capable of resolving complex work issues.

Although accommodation and cooperation bargaining may seem the most reasonable and advantageous approach to collective bargaining for both employers and unions, the laws controlling collective bargaining tend to foster conflict and power bargaining. "Although no consensus exists on this issue, unions and their supporters argue that there are a number of areas in which both federal and state laws advance conflict and power bargaining rather than promoting accommodation or cooperation" (Herman 70).

One example of the law fostering conflict and power bargaining is in the protection of strike activities. Union advocates believe that the law governing these activities actually discourage mutual acceptance of strike pressures. The Taft-Hartley Act Section 7 and 8(b)(1) gives employers, seeking to avoid strike pressures, protection of law as it limits picketing and allows hiring outsiders to fill a job vacated by strikers. Another provision of this Act, drafted with the intent of protecting unions makes it an unfair labor practice for employers to dominate labor organizations. Employers seeking a cooperative approach to bargaining by encouraging joint employer-union committees may face opposition from unions claiming this an unfair labor practice. Unions may choose to restrict member activities with employers based on the belief that joint activities such as joint committees increase employer's control over workplace issues.

In all fairness, however, it is reasonable to assess that the laws governing collective bargaining drafted in 1935 and 1947 and subsequent rulings by the National Labor Relations Board, attempt to address the historically adversarial nature of collective bargaining. Accordingly, the Taft-Hartley Act or the Labor Management Relations Act of 1947, begins with language that reflects the nature of collective bargaining up until that time, "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees and labor

organizations each recognize under law one another's legitimate rights in their relations with each other . . ." (Section 1 § 141 (b). Considering the above passage of the Taft-Hartley Act, it may be viewed that one of the goals of this Act was to minimize the tradition of industrial strife brought on by a legal system opposed to collective bargaining and other organized labor activities. It does not appear that the purpose is to eradicate conflict or power bargaining styles. More likely the purpose of this Act is to legitimize collective bargaining by establishing laws governing the nature of this process.

Whether or not conflict and power bargaining is fostered by the laws governing collective bargaining, these laws dictate procedures and methods in which collective bargaining, organized labor, and employer activities can be legally conducted. Conflict and power bargaining are the historical approach to labor negotiations, with industries such the airlines, steel and mining serving as historical examples.

Chapter 3- Transition

Although conflict and power bargaining have been the traditional approaches to collective bargaining in the United States, cooperative bargaining also known as interest-based bargaining, has gained increasing attention and popularity among lawmakers, mediators, and employers. Several factors contribute toward this trend in bargaining including governmental labor studies and changing economic factors, which increase the need for businesses to maintain a competitive edge in the marketplace.

In an attempt to address current labor conditions in 1993, former Secretary of Labor Robert B. Reich announced the formation of the Commission on the Future of Worker-Management Relations. The initial Fact-Finding Report issued May 1994 and the Final Report and Recommendations issued December 1994 (referred to as the Dunlop Report) were instrumental in addressing many issues and providing recommendations to increase, for example, labor-employer cooperation and employee participation in the workplace. The Dunlop Report recommends changes for collective bargaining reporting,

"The workplaces that we have inherited are far too adversarial in tone for the good of the American economy. Changes must be made in the way firms, employee and unions interact and in workplace laws and regulations, to enable them to carry out successfully the vital tasks society places on them" (20).

This report supports not only cooperative bargaining and joint employer-labor partnerships but finds that employee participation programs increase productivity, morale and the overall economic health of organizations. A contributing factor to the recommendation for more employee participation programs is the fact that a better educated workforce now demands more say in workplace decisions. The report also supported the continued prohibition of company-dominated labor organization as defined in the National Labor Relations Act. In order to allow for greater employer-labor cooperative relationships and employee participation programs, however, ". . . the Commission recommended that it be an unfair labor practice under NLRA Section 8(a)(1) for an employer to bypass the union or to introduce or manipulate an employee participation program to subvert the collective bargaining process" (Herman 363). A distinction

clarifying employer interference with union activity is necessary to protect the rights of labor while allowing for increased cooperation.

Economic factors influencing a need for a more cooperative approach between employers and labor are the increased globalization of products and services. Competition from nonunion organizations is also an economic threat, as they tend to operate more efficiently and with more flexibility within changing economic conditions.

The hospitality industry is an example of one industry that made necessary changes in employer-labor relations for economic survival. According to an article published by the National Labor Management Association, "The economics of the hotel industry in general declined in the late 1980s and early 1990s, a result of overbuilding, high mortgages, and the recession" (1). Additionally, competition from non-unionized hotels with less work rules and greater flexibility to accommodate changing customer preferences forced a dramatic change in the labor relations.

Other industries that are shifting away from conflict and power bargaining are the auto, mining and coal industry. The Labor agreement between the Saturn Corporation and the United Auto Workers provides language for achieving common goals of both parties. Common goals are indicative of cooperative or interest-based bargaining. The late 1990s agreement between the United Mine Workers of America and the Bituminous Coal Operators Association, serves as another example of economic factors influencing a shift toward cooperation providing that the coal industry,

" . . . Operates in a global economy and faces the challenges of environmental legislation as well as fierce domestic and foreign competition. Mutual cooperation at the highest levels and sincere commitment to communication and problem solving are therefore critical for the industry to maintain and enhance its competitive positions" (Herman 198).

The industries transitioning to cooperative bargaining were not without assistance, however. Many of these industries adopted provisions presented in the Federal Mediation and Conciliation Service's 1995 publication, "Guidelines: Innovative Collective Bargaining Contract Provision." The Federal Mediation and Conciliation Service (FMCS) is a governmental agency created by Congress in 1947 as an independent agency to promote employer-labor relations. The Labor-Management Cooperation Act of 1978 expanded FMCS's role in employer-labor relations by providing education and training processes with the intent of helping employers and employees build better, more cooperative relations. In addition to the guidelines provided, the FMCS provides training in cooperative or interest-based bargaining. The mission of the FMCS, clearly stated in the publication, "Labor Management Relations for the 21st Century" provides that,

"In today's highly-competitive global economy, workplace relations are changing. There is a growing need for more cooperative, less antagonistic relations between management and workers, so that U.S. companies and their employees can better succeed and prosper (1).

Recognizing a drastic need for change by governmental agencies and the economic survival of many U.S. industries, the transition to interest-based bargaining has created a new, less adversarial, trend in employer-labor relations.

Chapter 4- Interest-Based Bargaining

The term interest-based bargaining refers to the style and attitude toward collective bargaining during the negotiation of labor agreements between employers and unions. Interest-bargaining also has a great affect on the overall conduct and attitudes between employers and unions. Other terms used to describe interest-based bargaining are cooperative, principled, mutual gains and integrative bargaining.

Whether interest-based bargaining is referred to as cooperative, principled, mutual gains or integrative bargaining, they all share the same goal. This goal is to uncover common interests of the parties involved in the negotiating process. In the classic text on this subject, *Getting to Yes: Negotiating Agreements Without Giving In*, authors Fisher and Ury believe that traditional, adversarial negotiations, referred to as positional negotiations, "become a contest of will" (6). In this style of negotiating, each side seeks a favorable agreement by starting with an extreme position. As the negotiating process continues, parties maintain their positions, ". . . by stubbornly holding on to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiation going" (6). Positional negotiating, viewed by Fisher and Ury, is time-consuming, a threat to the ongoing relationship of the parties involved and the cause of many hasty and unwise agreements.

Fisher and Ury provide an alternative solution to positional negotiations with their principled negotiation method. This method is based on four basic points: people, interests, options, and criteria. The first objective is to separate the people from the problem as this step helps people focus on attacking the problem and not each other. Interests refer to the process of focusing on common interests of the parties and not resorting to taking positions. Inventing options means generating a variety of possible solutions before reaching agreements and the fourth point, criteria, is an agreed upon objective standard used in decision making such as market value, law or expert opinion. The main objective of adopting these four points during negotiations is to uncover the common interests of both parties, which leads to an atmosphere of cooperation and trust.

Interest-based bargaining, although gaining recent popularity, is not a late 20th century invention. As early as the 1900s, management theorist Mary Parker Follett presented the idea of integrative bargaining, which is also often referred to as mutual gains bargaining. In her work concerning negotiations between unions and management, she addresses the fact that traditional collective bargaining agreements, "usually are the results of compromise." She furthers that, "Compromise means a giving up of something, whereas integration implies an attempt to satisfy the needs of both sides" (Herman 182).

Other business theorists, such as authors Walton and McKersie, have furthered the concept of integrative bargaining, publishing their groundbreaking work in *A Behavioral Theory of Labor Negotiations* in 1965. Labor negotiations, according to Walton and McKersie are categorized into four subprocesses. The first two subprocesses, distributive and integrative bargaining, are addressed in this paper.

Distributive bargaining, also referred to as conflict, power and adversarial bargaining, is a hypothetic construct referring to the, "attainment of one party's goals when they are in basic

conflict with the other party's goals" (4). The basic conflict is in the distribution of available resources or "what game theorists refer to as fixed-sum games," in which, "one person's gain is a loss to the other" (4).

Integrative bargaining, on the other hand, is different in that the goals of one party are not fundamentally in conflict with that of the other party. Walton and McKersie further state that, "Integrative potential exists when the nature of a problem permits solutions which benefit both parties, or at least when the gains of one party do not represent equal sacrifices by the other" (5). One of the real challenges of negotiation is when employers and unions are unable to recognize that the problems they bring to the negotiating table may be of common interest. Problems of common interest can be resolved with a win-win solution. Adversarial bargaining tends to divide parties into either winners or losers.

The work of labor negotiation theorists, such as Walton and McKersie, tends to be very complex and involved drawing upon mathematical bargaining models and game theory. It is important to include these concepts, however, as they are important to understanding the topic of interest-based bargaining. In any literature written about labor negotiations, collective bargaining and bargaining styles, academic theory is present and clearly the foundation of more recent, popularized methods of negotiation.

Chapter 5- Case Study: San Francisco Multiemployer Group and the Hotel Employees and Restaurant Employees Local 2

Until the early 1990's, employer-union relations in the San Francisco hospitality industry was characterized by an intensely adversarial relationship with strikes and grievances serving as the normal course of resolving labor disputes. Due to many factors threatening the success of the industry during this time, several hotels formed the San Francisco Multiemployer Group with the purpose of creating an atmosphere of cooperation and trust with the union, Hotel Employees and Restaurant Employees (HERE) Local 2. This group was eventually able to enlist the full support of HERE Local 2 and the implementation of interest-based bargaining between the two groups dramatically changed the collective bargaining process and nature of the 1994 and 1999 labor agreements.

Many factors threatened the financial health of the San Francisco hospitality industry in the early 1990's. In addition to over building and high mortgages, a city-wide recession was a contributing factor to the loss of profitability in the industry with, "40% of all 70,000 jobs lost due to the recession in the nine-county Bay Area since 1990" (Burstiner 2). Another threat to the industry was competition from a growing trend of new, non-unionized hotels that operate without restrictive work rules, better serving the changing needs and preferences of customers. Even the method used to resolve labor disputes, with strikes, grievances and arbitration serving as the means for conflict resolution also contributed to the declining economic health of the hospitality industry. These traditional methods of conflict resolution significantly drained industry resources and further hindered the morale of both parties, steering them away productivity and profitability.

The first step toward interested-based bargaining between these two parties was on the part of the Hotel Multiemployer Group. After concluding that a more cooperative approach was

essential, this group approached the union (HERE) for support suggesting the participation in a non-binding, preliminary joint study project. In his article, "Negotiating Trust in the San Francisco Hotel Industry," attorney and labor negotiator Stuart Korshak, states that the purpose of the preliminary study project was, ". . . to develop a mutual vision statement that would replace the unilateral one the hotels had developed earlier, as a shared vision was essential to achieving real change" (Korshak 3). In addition to assisting with initiating the preliminary joint study project, Korshak sought assistance from the Federal Mediation and Conciliation Service. Korshak secured a substantial grant to fund the joint study project as well as interest-based training for both parties. A team of labor experts including industrial psychologists and economists were recruited for this project to advise and serve as facilitators.

With full agreement from HERE, the preliminary joint study project began with three individual sessions for managers, union representatives and union line-workers. They studied models of companies that have successfully implemented joint labor-management interest-based bargaining. They learned that, ". . . each successful example of change involved recognizing the legitimate role of all the stakeholder in the process of change, including the worker and their unions" (Korshak 5). Korshak further noted that the hotel industry managed with an authoritarian, top-down system with little worker input and involvement served as an impediment to real change.

Through this process, which is unlike the traditional approach of determining interests separately and in secret, the joint study project reached a consensus on several points before bargaining. First, they concluded that less restrictive work rules would better serve their hotels and restaurants and an increase in training was necessary to implement them. Secondly, they determined that the sick-pay system wasn't working and thirdly, the grievance system that was in place needed restructuring as well. Korshak concludes, "Most importantly, both sides agreed that the very process of employee involvement teams engaging in a joint search for solutions to workplace problems was itself a powerful tool for building trust and creating meaningful change in labor-management relations" (5).

With several key issues, or common interests, identified as problems by the joint study committees, labor negotiations began in 1994. The Multiemployer Group initiated negotiations with an unprecedented first move. In order to foster goodwill, the multiemployer group made a full disclosure of their financial condition and profitability. In traditional adversarial bargaining, full financial disclosure is very guarded and in worst-case scenarios, a union demand rather than a gesture to promote trust. Next, formal joint-bargaining sub-committees or fact-finding teams were formed to further address the problems previously identified.

"Using this strategy, we were able to develop joint proposals in all of these critical areas that the study phase had identified as problems. Instead of unilateral proposals that are dead on arrival, these were joint proposals that both sides understood and took ownership of from the very beginning" (Korshak 6).

The fact-finding teams focused on the mutual interests uncovered in the preliminary study and successfully created mutually beneficial solutions for both parties.

The final phase of labor negotiations, in which both parties finally agree upon the issues negotiated, has traditionally been very difficult and the point in which strikes have occurred. Tension between the parties escalates when the final division of the economic pie is at hand. In this case, because the union had been so actively involved in the solution process, the Multiemployer Group persuaded the union to take a huge surplus of cash it had build up and invest in programs such as employee training. In his article, "A Labor-Management Partnership," Korshak stated, "As a result, the Multiemployer Group's overall settlement package in 1994 was well under what it would have otherwise been. For their part, the workers got a wage increase of 3% or more per year" (26). Korshak contributes this success to the spirit of cooperation and an air of trust that developed between these two groups during the joint study and fact-finding phase of negotiations.

In addition to the success of the interest-based process, an innovative provision called the living contract was introduced. Normally, contracts are unchangeable until the next round of negotiations and any attempt to do so, usually results in the issuance of grievances and arbitration. But in this case, with the living contract provision, managerial and union joint steering and fact-finding committees are able to agree upon and adopt workplace changes as needed. Other positive changes that can be attributed to interest-based bargaining are an increase in worker morale as communication with managers has improved, and productivity gains after training programs are conducted. Customer satisfaction has improved as well as less restricted work rules allows an increase in meeting customer needs.

Interest-based bargaining proved successful in negotiating the 1994 and 1999 labor agreements between the San Francisco hotel Multiemployer Group and the Union (HERE). Key to this success was a carefully planned transition focusing on the education and training in the process of interest-based bargaining and establishing a new sense of trust between the two parties.

Chapter 6- Criticism of Interest-Based Bargaining

Although interest-based bargaining is promoted by governmental agencies such as the Federal Mediation and Conciliation Service and the National Labor Relations Board, taught widely by scholars, and a frequent topic in popular print, not everyone is in favor of this bargaining style. Some labor negotiators believe that the interest-based bargaining style is flawed for a number of reasons including the emphasis on cooperation and full disclosure of information.

Ira B. Lobel makes a strong case suggesting that this style should not be used to replace the more traditional adversarial or power bargaining. Lobel, a mediator with over 30 years of experience, believes that proponents of interest-based bargaining are selling a new product but, "In reality, it is nothing new, but a rehash and a reminder of some basic principles of sound and effective bargaining" (9). Lobel's concern is that people will get lured into thinking that interest-based bargaining will eliminate conflict and make tough decisions easy. Conflict, he believes, will always exist in the workplace, as it is the nature of people to disagree. Conflict, if handled appropriately by a skilled negotiator can work as an effective tool during negotiations.

In an interview, Gerald Nuijen, former contract negotiator for the California Teachers Association (CTA), furthered this point. In his experience with interest-based bargaining, he found the emphasis on the elimination of conflict was always present. Nuijen states, "Before

negotiations began, we were encouraged to discuss our feelings as if this was a substitute for stating our positions on issues. This wore us out, delayed settlements and actually worked to create hard feelings between the parties". Lobel believes that the stating of positions and the gradual adjustment of those positions is revealing to both parties. By negotiating in this way, what is and isn't acceptable to both parties, becomes clear. In interest-based bargaining, parties may be misled about actual solutions considered acceptable by each side. Parties are encouraged to remain neutral about possible solutions to problems instead of taking clear positions on issues as they are discussed.

There is also a strong emphasis in interest-based bargaining to reveal information normally withheld and used as strategy in traditional bargaining. It is Nuijen's belief that this emphasis on disclosure often works to the advantage of the employer. In his experience, employers would often withhold information about upcoming budgets, pleading ignorance about future fiscal matters. These employers would then turn around and demand full disclosure from the union. If the union did not reveal information the employers wanted, they would claim the unions were uncooperative. Lobel asserts that revealing all information is not necessary. Information is not the key to successful labor agreements but dependent instead, upon the skill of the negotiator.

Lobel makes many points about interest-based bargaining vs. adversarial, conflict or power bargaining but his essential point is that, "It is the skill of the negotiator that is key, not the label that is put on the style of bargaining" (15). Skilled negotiators will apply whatever style is appropriate to a given situation and allowing for this flexibility is most important.

Conclusion

The nature of collective bargaining in the United States has significantly changed since laborers first attempted to negotiate for better wages in late 1700's. Employers were openly hostile to laborers bargaining collectively and legal impediments such as court ordered injunctions served to limit this process. With the passage of several Congressional Acts, most notably being the National Labor Relations Act of 1935, collective bargaining finally became a legal labor activity.

Collective bargaining is not only a method in which to negotiate for better wages, working conditions and benefits, it also serves as a subject of study among academics, legislators and federal and state commissions. The purpose of such studies, findings and recommendations is to promote better methods of negotiating and to encourage more cooperation from all parties involved. With the added pressure of global competition in the late 20th century, it became increasingly apparent that the traditional adversarial style of bargaining was serving as an impediment to labor negotiations. As an alternative to adversarial bargaining, interest-based bargaining was gradually introduced by labor negotiator, lawyers, and promoted by such agencies as the Federal Mediation and Conciliation Services.

Proponents of interest-based bargaining believe that this approach fosters cooperation and trust between parties. To achieve these goals, parties are instructed to focus on developing common interests and withholding position taking during negotiations. Other principles of interest-based bargaining are incorporated in the process and have contributed to the success of improved employer-labor relations, and labor agreements.

Although interest-based bargaining has grown in use and popularity, critics of this approach feel that a successful labor negotiation is not contingent upon bargaining style. It is believed that the key to a successful negotiation is in the skill of the negotiator. Critics of this style warn that interest-based bargaining should not serve as a replacement for other valid styles of bargaining.

Contrary to the critics of interest-based bargaining, this style of bargaining worked successfully for the San Francisco Multiemployer Group and the Hotel Employees and Restaurant Employees, Local 2. Interest-based bargaining dramatically transformed the relationship between these parties resulting in many changes including a flexible labor contract. Over a five-year period, these changes allowed for an increase in hotel productivity and profitability.

Interest-based bargaining has worked to transform a traditionally adversarial relationship between parties in the San Francisco hospitality industry to a more cooperative one. This process of change can serve as an example for other industries desiring an end to unproductive labor relations. As labor negotiators across the country become better skilled in the art of interest-based bargaining, employers and laborers can look forward to playing a greater role in determining the terms and conditions that affect their workplace. These participants in the process of collective bargaining would do well to consider the words of Samuel Gompers, founder and president of the American Federation of Labor, as they develop the art of interest-based bargaining:

"The labor movement has for its purpose the securing of the best possible economic and social conditions for the masses and the attainment of these with the least possible friction, the meeting of problems as they confront us: the making of the day after this a better day than the one preceding."

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